

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2227 OF 2005

Shri Dnyaneshwar Ramchandra Gote ... Petitioner

V/s.

Yusuf Haji Manik Shaikh ... Respondent

Mr.A.A. Kumbhakoni for Petitioner
Mr.P.K. Dhakephalkar for Respondent

CORAM: SMT.NISHITA MHATRE, J.

DATED: JULY 25, 2005

P.C.:

. The Petition challenges the concurrent findings of fact of the Courts below. The point of law sought to be raised is that the suit itself was not maintainable as the two prayers sought in the suit by the plaintiff were self contradictory. According to the petitioner, one of the prayers is on the basis that there is a relationship of licensor and licensee while the other was on the basis that it was a relationship of landlord and tenant. The Court proceeded on the footing that it had jurisdiction to entertain such a suit since an objection regarding maintainability of such a suit was not raised.

2. The issue raised questioned the jurisdiction of the Court to determine the dispute between the parties.

Accordingly, the trial Court framed such an issue and held that it had the jurisdiction to decide what was the exact nature of relationship between the plaintiff and the defendant. The trial Court concluded, after recording evidence that the relationship was one of the landlord and tenant and, therefore, proceeded to determine the other points in issue.

3. Mr.Kumbhakoni, learned Advocate appearing for the Petitioner relies on the judgement of the Gujarat High Court in the case of *Govindbhai Parshottamdas Patel & others v/s. New Shorrock Mills*, **AIR 1984 GUJARAT 182** to submit that although the Court had jurisdiction to try the suit, it was not maintainable as inconsistent pleas were raised. According to him, the procedure to be followed in the exercise of the Courts jurisdiction under the Rent Act is different from the Court exercising its power while deciding a dispute between a licensor and a licensee.

4. Mr.Dhakephalkar, appearing for the Respondent points out the judgement of this Court in *Kamruddin Shabuddin Tamboli v/s. Allauddin Fattemohamed Malik & Ors.*, **(Civil Revision Application No.755 of 1982 decided on 21.3.1984)** to submit that the pleas raised by the plaintiff were in the alternative and not inconsistent.

The plea regarding maintainability of the suit was never raised according to him before the trial Court.

5. A perusal of the pleadings indicates that the Petitioner had raised the objection with regard to the jurisdiction of the Court to entertain such a suit. The issue regarding jurisdiction was framed by the trial Court. The Appeal Court also decided whether the trial Court had jurisdiction to entertain the suit.

6. I see no reason to disturb the concurrent findings of both the Courts below since both the Courts had jurisdiction to entertain the suit. Even on merits, the Petitioner has not made out any justifiable ground warranting interference from this Court under Article 227 of the Constitution of India. Hence, Petition is dismissed.

7. The Petitioner seeks a stay of the order. Stay granted for a period of six weeks from today subject to the Petitioner filing an undertaking in the usual terms in this Court within two weeks from today.